physical possession or control. Nor may he lawfully have physical possession or control as servant or bailee of drugs which are owned by others. By physical possession or control I include things in his pocket, in his car, in his room and so forth. That seems to me to accord with the general popular wide meaning of the word 'possession' and to be in accordance with the intention of the Act.

On the other hand, I do not think Parliament intended to make a man guilty of possessing something when he did not know that he had the thing at all. And it is there that the real difficulties begin.

Lord Parker C.J. ([1967] 2 Q.B. 243, 248) was right (and this is conceded by both sides) in taking the view that a person did not have possession of something which had been 'slipped into his' bag without his knowledge. One may, therefore, exclude from the 'possession' intended by the Act the physical control of articles which have been 'planted' on him without his knowledge. But how much further is one to go? If one goes to the extreme length of requiring the prosecution to prove that 'possession' implies a full knowledge of the name and nature of the drug concerned, the efficacy of the Act is seriously impaired, since many drug pedlars may in truth be unaware of this. I think that the term 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities, and that ignorance or mistake as to its qualities is not an excuse. This would comply with the general understanding of the word 'possess'. Though I reasonably believe the tablets which I possess to be aspirin, yet if they turn out to be heroin I am in possession of heroin tablets. This would be so I think even if I believed them to be sweets. It would be otherwise if I believed them to be something of a wholly different nature. At this point a question of degree arises as to when a difference in qualities amounts to a difference in kind. That is a matter for a jury who would probably decide it sensibly in favour of the genuinely innocent but against the guilty.

The situation with regard to containers presents further problems. If a man is in possession of the contents of a package, *prima facie* his possession of the package leads to the strong inference that he is in possession of its contents. But can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been 'planted' in his pocket without his knowledge, so I do not think that he is in possession of contents which are quite different in kind from what he believed. Thus the *prima facie* assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it and no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents. For a man takes over a package or suitcase at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal.

So to read the Act would, I think, accord with what Parliament intended and would give it a sense which would accord with the practical views of a jury, although I realise that a deeper investigation of the legal implications of possession might support various differing views. It would leave some unfortunate victims of circumstances who move innocently but rashly in shady surroundings and who carry packages or tablets for strangers or unreliable friends. But I think even they would have an opportunity of ventilating their story and in some cases, if innocent of any knowledge and bad motives, obtaining an acquittal. Some of the persons in some of the rather far-fetched circumstances which have been envisaged in argument would still be left in difficulties. But I do not think that Parliament intended to cater for them in its efforts to stop a serious evil."

Similarly, our legislature in enacting the Act was clearly intending to prevent trafficking in drugs and to penalise the possession of harmful drugs except by authorised persons. In the words of Lord Pearce we "must, therefore, attempt from the apparent intention of the Act itself to reach a construction of the word "possession" which is not so narrow as to stultify the practical efficacy of the Act or so broad that it creates absurdity or injustice."

In our opinion the word "possession" in the Act should be construed as that word has been construed by Lord Pearce and we would respectfully adopt his reasons as contained in his speech. There is, however, one qualification because of the statutory presumptions in the Act. Under our Act where a person is in possession of a bag or package which contains in fact a controlled drug it is presumed that he is in possession of and knows the nature of the controlled drug unlike in the United Kingdom where there is only a *prima facie* strong inference that he is in possession of its contents. Thus under our Act the burden rests on him to prove on a balance of probabilities that he was not in possession of and did not know the nature of the controlled drug which was contained in the package or bag.

For all these reasons the appeals of both appellants are dismissed.

Appeals dismissed.

Solicitors: *J. Tan Chor-Yong & Co.; Francis T. Seow.*

SINGAPORE BUS SERVICE LTD. v. LIM SWEE PHENG & SONS (PTE.) LTD.

[C.A. (Wee Chong Jin C.J., Chua & Rajah JJ.) November 13, 1979]

[Singapore — Civil Appeal No. 35 of 1979]

Workmen's Compensation — Indemnity claim by employers of deceased against negligent third party — Appeal — Scope of s. 18(b) of Workmen's Compensation Act, 1975 — Workmen's Compensation Act, 1975, ss. 6, 7, 18 & Third Schedule.

In this case Choor Singh J. allowed the respondents' application to be indemnified by the appellants in respect of the compensation which the latter made under section 18 of the Workmen's Compensation Act, 1975 to the dependants of their servant, Buang bin Abdullah. The latter died as a result of the negligence of the defendants' servant, Wee Chow Soon. The appellants appealed to the Court of Appeal.

Held, dismissing the appeal: (1) giving the language of the said section 18 its natural meaning in the context of the Workmen's Compensation Act as a whole, the indemnity which the employer is entitled to is of the whole amount of the compensation which the person who is responsible in law for the injury has caused him to pay;

(2) there is no ambiguity in the language of section 18(b) and there is nothing in the language of section 18 to suppose that it is intended that the amount of indemnity which the employer is entitled to is to be at large to be settled in an action;

(3) under the Workmen's Compensation Act, a child of a deceased workman is a dependant irrespective of whether such person is actually dependent on the workman's earnings or not and is entitled to recover compensation under the Act.

[The following authorities were cited in argument in the Court of Appeal:- *Public Transport Commission of New South Wales* v. *J. Murray More (N.S.W.) Pty. Ltd.* 6 A.L.R. 271, *X Politos & Anor.* v. *Sutton Tools Pty. Ltd.* 13 A.L.R. 575; *Tickle Industries Pty. Ltd.* v. *Hann & Anor.* (1972-73) 130 C.L.R. 321; *W. Cory & Son Ltd.* v. *France, Fenwick & Co. Ltd.* [1911] 1 K.B. 114; *The New South Wales Workers*

Compensation Act; The State of Victoria Workers Compensation Act; Cutsforth & Johnson (1913) 108 L.T. 138; *Dymond* v. *Pearce* [1972] 1 Q.B. 496; *Woh Hup (Pte.) Ltd.* v. *China Insurance* [1978] 1 M.L.J. 59.]

HIGH COURT.

Loh Boon Huat for the plaintiffs.

Cheong Yuen Hee for the defendants.

Cur. Adv. Vult.

Choor Singh J.: In this action the plaintiffs claimed under section 18(b) of the Workmen's Compensation Act, 1975, an indemnity in respect of the sum of $31,514.40 which the plaintiffs had paid by way of compensation to the dependants of their servant Buang bin Abdullah who died as a consequence of the negligence of the defendants' servant Wee Chow Soon.

The facts are these. Buang bin Abdullah was employed by the plaintiffs as a lorry driver. On June 14, 1976 Buang was driving the plaintiffs' lorry No. Y9321H along Upper Thomson Road. When it reached the 9½ mile stone of Upper Thomson Road, the lorry broke down at the left side of the road. Buang got down from his lorry and went underneath it to repair some mechanical defect. The defendants' bus No. SBS. 6308A driven by their servant Wee Chow Soon in overtaking the plaintiffs' lorry collided with it and in so doing caused the lorry to lurch forward and collide or run over the said Buang bin Abdullah. As a result of this accident he sustained injuries to which he succumbed.

The lorry was parked at the extreme edge of the road. The driver of the bus Wee Chow Soon admitted at the trial that the lorry was parked only eight inches from the kerb. He also admitted to the plaintiffs' witness Lai Kar Leng who arrived at the scene soon after the accident, that he was overtaking the stationary lorry and in doing so his bus came into contact with the lorry. According to Sgt. Samad bin Abdullah who investigated this accident, there was sufficient space on the road for the bus to pass the lorry safely. He also found that the rear offside tailboard of the lorry was scratched and that the middle nearside passengers' door of the bus were dented and scratched. Wee Chow Soon, the driver of the bus admitted in his report made to the police within a few hours of the accident, that while overtaking the stationary lorry the rear left side of his bus hit the right rear side of the lorry. At the trial, Wee Chow Soon denied telling this to the police. In my opinion he was not speaking the truth. He did not impress as a truthful witness. I rejected his evidence.

In my judgment, the evidence in this case clearly established that Wee Chow Soon was negligent in overtaking the stationary lorry. He did not give the lorry a wider berth and when trying to pass it the rear left side of his bus collided with the rear right side of the lorry, as admitted by him in his police report and which is also supported by the damage to the two vehicles. Accordingly I found that the death of the deceased was due to injuries received in the course of his employment and which were caused by the negligence of the defendants' servant Wee Chow Soon.

As a result of the death of Buang bin Abdullah from injuries received in the course of his employment, the plaintiffs were obliged by law to pay compensation to his dependants as assessed under the Workmen's Compensation Act, 1975. Compensation was assessed by the Commissioner for Labour under the aforesaid Act in the sum of $31,514.40. On the 16th day of April, 1977 the plaintiffs paid to the Commissioner for Labour the said sum of $31,514.40 by way of settlement of the compensation due under the Act to the deceased's dependants.

The plaintiffs claimed in this action an indemnity in respect of the aforesaid sum of $31,514.40 which they paid as compensation to the dependants of the deceased who died as a consequence of the negligence of the defendants' servant Wee Chow Soon. This claim was based on the provisions of section 18 of the Workmen's Compensation Act, 1975, which provides as follows: —

"Where any injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof —

(a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Act, but he shall not be entitled to recover both damages and compensation; and

(b) if the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called upon to pay an indemnity under subsection (2) of section 17, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid."

It will be seen that when a workman is injured in the course of his employment due to the negligence of a third party, or dies as a result of those injuries, a claim can be made under paragraph (a), either against the employer for compensation under the Workmen's Compensation Act or against the third party for damages under the common law. And under those circumstances, if an employer has been called upon to pay compensation, he is entitled under paragraph (b), to be indemnified by the person liable to pay damages under the common law.

In this case, the plaintiffs as employers of the deceased were called upon to pay compensation under the Workmen's Compensation Act. Under section 18(b) of the Act they are entitled to recover the amount they paid as compensation from the defendants for the negligence of their servant Wee Chow Soon.

It was contended on behalf of the defendants that a claim against them for damages under the common law would have failed because the deceased had no one dependent on him; his two sons being employed were in no way dependent on the deceased.

I rejected this submission. In my judgment the expression "shall be entitled to be indemnified by the person so liable to pay damages as aforesaid" merely identified the person against whom an indemnity can be claimed i.e. the person who negligently caused the injury. If his negligence is established he is liable to indemnify the employer to the extent of the compensation paid by the employer under the Workmen's Compensation Act. Under this Act, a child of a deceased workman is a dependant irrespective of whether

such person is actually dependent on the workman's earnings or not and is entitled to recover compensation under the Act. See definition of "dependant" in section 2 under the Act.

The plaintiffs having been called upon by the Commissioner for Labour to pay compensation under the Act, were in my judgment clearly entitled, under section 18(b) of the Act, to recover the amount they paid from defendants whose servant Wee Chow Soon was solely responsible for the accident which brought about the death of the deceased.

It was for these reasons that I allowed the claim of the plaintiffs and entered judgment for them against the defendants in the sum claimed.

From the above judgment the defendants appealed.

COURT OF APPEAL.

Cheong Yuen Hee for the appellants.

Christopher Lau Loke Sam for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): On June 14, 1976 a lorry driver in the employ of Lim Swee Pheng & Sons Pte. Ltd. was driving his employer's lorry No. Y9321H along Upper Thomson Road when it broke down. He got out of the lorry and when he was underneath it to try and repair it a bus belonging to Singapore Bus Service Ltd. (the appellants in this appeal) collided with the stationary lorry in attempting to overtake it. As a result of the collision the lorry lurched forward and the lorry driver sustained injuries from which he subsequently died.

The Commissioner under the Workmen's Compensation Act, 1975 assessed the compensation payable under the Act to the "dependants" of the deceased lorry driver in the sum of $31,514.40. The deceased's employers, being obliged to pay under the Act, paid the assessed compensation and commenced the present action against Singapore Bus Service Ltd. claiming to be indemnified in respect of the said sum of $31,514.40. The claim to be indemnified is based upon the provisions of section 18 of the Act which reads as follows: —

"18. Where any injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof —

(a) the workman may take proceedings against that person to recover damages and may claim against any person liable to pay compensation under this Act, but he shall not be entitled to recover both damages and compensation; and

(b) if the workman has recovered compensation under this Act, the person by whom the compensation was paid... shall be entitled to be indemnified by the person so liable to pay damages as aforesaid."

Choor Singh J. found that the driver of the bus was negligent in overtaking the stationary lorry and was solely to blame. Choor Singh J. also found, on the true construction of section 18(b) of the Act, that the deceased's employers, having established that the appellants' servant was solely to blame, was entitled to be indemnified by the appellants to the extent of the compensation paid by them to the deceased's dependants. It was not in dispute that the deceased left surviving him two sons who were not dependent on his earnings. Choor Singh J. held that the expression "shall be entitled to be indemnified by the person so liable to pay damages as aforesaid" in section 18(b) merely identified the person against whom an indemnity can be claimed.

The appellants now appeal. First, they contend that the trial judge was wrong in finding that their servant was solely to blame. The argument is that the deceased was also negligent in parking the lorry on a narrow road. The evidence was that the lorry was parked where it was at the time of the collision because it had broken down. It was parked on the extreme edge of the road and in daylight. On that evidence, which was undisputed, it cannot be said that the trial judge was wrong in not finding that the deceased was negligent and in placing the sole blame on the driver of the bus.

Their main contention is that the trial judge was wrong in his construction of section 18(b) of the Act. The argument is that, on the true construction of section 18(b), the entitlement of an employer who has paid compensation under the Act to be indemnified by the person who is under a legal liability to pay damages is limited to the amount of damages which the workman or his dependants could have recovered in an action for damages.

Section 3 of the Act imposes a statutory liability upon the employer irrespective of fault to pay compensation. Section 6 provides that where compensation is payable, it shall be payable to or for the benefit of the workman, or, where death results from the injury, to or for the benefit of the dependants as provided by the Act. Section 7 provides that the amount of compensation payable shall be in accordance with the Third Schedule to the Act. Under paragraph 1 of the Third Schedule where death results from the injury the amount of compensation shall be a lump sum of $35,000 or, depending on the age of the workman at the time of the accident, equal to nine or seven or six years' earnings, whichever is less. Section 2 defines "dependant" in respect of a deceased workman to mean, *inter alia*, "child ... irrespective of whether such person is actually dependent on the workman's earnings...".

Section 18 provides that where any injury for which compensation is payable under the Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof the workman may sue that person to recover damages and may claim compensation under the Act against his employer but he may not recover both damages and compensation. Section 18 also provides that an employer who has paid compensation under the Act "shall be entitled to be indemnified by the person so liable to pay damages as aforesaid". The object of section 18(a) was to prevent the workman or his dependants from enforcing the double remedy and recovering damages and compensation. Where the workman or his dependants elect to claim and recover compensation under the Act when his

injury was caused by the wrongful act of a "stranger", section 18(b) provides that the wrong-doer should not escape the consequences of his wrongful act by giving the workman's employer an entitlement to be indemnified by the wrong-doer in respect of the compensation which he has paid.

The general object of the Act was to make the employer, irrespective of fault, liable to pay compensation for injuries sustained in the employment. Sections 6 and 7 and the Third Schedule to the Act are part of the scheme for compensation. They prescribe the amount of compensation that has to be paid by the employer and for whose benefit the compensation is payable. Section 18 is another part of the scheme. It provides that the workman's common law rights are not affected, it provides against the possibility of the workman obtaining both damages and compensation and, lastly, it provides an indemnity for the employer who has paid compensation by the person who is responsible in law for the injury to the workman which has caused the employer to be liable to pay compensation.

In our opinion, giving the language of section 18 its natural meaning in the context of the Act as a whole, the indemnity which the employer is entitled to is of the whole amount of the compensation which the person who is responsible in law for the injury has caused him to pay. There is no ambiguity in the language of section 18(b) and there is nothing in the language of section 18 to suppose that it is intended that the amount of indemnity which the employer is entitled to is to be at large to be settled in an action.

Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Chan, Goh & Co.; Cooma, Lau & Loh.*

SHARMA LAL CHAND v. GHAN SHYAM RAI

[O.C.J. (Sinnathuray J.) October 5, 1979]
[Singapore — Motion in Suit No. 2747 of 1979]

Societies — Meetings — Association run by management committee — Secretary instructed by committee to convene annual general meeting — Notice issued by secretary to postpone meeting — Whether secretary had the right to do so.

The association in this case was run by a management committee. On July 15, 1979 a meeting was held whereby the said committee had agreed to convene an annual general meeting on August 26, 1979. Pursuant to this, the honorary secretary, the plaintiff in this case, was instructed to take steps for the annual general meeting to be held on that day. On August 23, the secretary had issued a notice of postponement of the said meeting. Despite this notice, members turned up on August 26, 1979 and a meeting was held, because the day prior to that, on August 25, the President of the Association issued a notice stating that the annual general meeting was to be held as scheduled.

Pursuant to an *ex-parte* application made by the plaintiff and heard on September 15, 1979, the learned judge issued an interim injunction ordering that the defendant (the present secretary of the association who was elected at that meeting which took place on August 26) to cease acting as the honorary secretary of the association. The judge also ordered that the plaintiff be reinstated as honorary secretary.

The plaintiff claimed that he acted as he did because the membership list and the accounts from January to July 1979 were not ready.

Held: the association was managed by a management committee and the secretary had therefore no right to postpone the meeting which the committee had decided to convene. The interim injunction must therefore be dissolved.

MOTION IN SUIT.

E.J. D'Souza for the plaintiff.

Joe Chellam for the defendant.

Cur. Adv. Vult.

Sinnathuray J. (delivering oral judgment): The Arya Samaj Singapore is an association. It owns a building in Syed Alwi Road. There is a temple in this building and priests are employed by the association. The association also runs a school. For that purpose it employs a teacher.

The association is run by a management committee consisting of 15 members who are elected at annual general meetings. For the year 1978 it had a full committee, but I am told from the Bar that one had resigned and at the material time the management committee consisted of 14 members.

There was a management committee meeting on 15th of July 1979. At that meeting a decision was taken to convene an annual general meeting scheduled for the 26th of August, 1979 which incidentally was well beyond the time stipulated in the rules of the association for the holding of the annual general meeting for the year 1979. Pursuant to that meeting, the honorary secretary was instructed to take steps for the annual general meeting to be held on that day.

In the course of preparing for that meeting, on 19th of August, 1979, the secretary sent a letter to the treasurer requesting, in particular, for the secretary to be furnished with a list of paid up members and those who were in arrears of their subscriptions. It is relevant to mention that in this letter, the secretary also asked the treasurer for the accounts to be prepared and completed up to the 31st of July, 1979. As regards this latter matter, under the rules of the association and the agenda which was issued, the annual general meeting was only to consider and approve the audited statement of accounts for the year ended 1978. The response from the treasurer was by way of a letter, which I need not refer to, but it is clear that the secretary and the treasurer were certainly not on cordial terms. Then a surprising event occurred.

On 23rd of August the secretary issued a notice to all members headed: "Notice of postponement of the annual general meeting to be held on 26th of August, 1979." The relevant portion reads:

"With much regret I am compelled to serve Notice hereby that the Annual General Meeting to be held on August 26, 1979, is being hereby postponed."

And the reasons are thereafter set out. Despite this notice, members turned up on 26th of August, 1979 and a meeting was held. It was because the day prior to that, on the 25th of August, the president of the association issued a notice, which is exhibit "A" in the defendant's affidavit. I will read it: